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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 MARSHALL BANK, N.A.,

8 Plaintiff,

9 v.

10 NOOKSACK BUSINESS
11 CORPORATION II, and NOOKSACK
INDIAN TRIBE

12 Defendants.

No. C09-1245-RSL

ORDER REMANDING CASE

13 This matter comes before the Court on “Plaintiff’s Motion for Remand.” (Dkt. #4).
14 Defendants, a tribal corporation and an unincorporated Indian tribe, filed a Notice of Removal in
15 this matter originally brought in the Superior Court of Washington for Whatcom County.
16 Plaintiff timely submitted its motion for remand, alleging defendants’ removal to federal court to
17 be defective on its face. Having reviewed the documents and applicable statutes, the Court
18 remands the matter to Whatcom County Superior Court.

19 **Removal and Remand**

20 The removal statute, 28 U.S.C. § 1441, is construed restrictively: any doubts
21 regarding the removability of a case will be resolved in favor of remanding the matter to state
22 court. See, e.g., Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 108-09 (1941); Duncan v.
23 Stuetzle, 76 F.3d 1480, 1485 (9th Cir. 1996).

24 Defendants’ Notice of Removal alleges federal subject matter jurisdiction solely
25 on diversity of citizenship pursuant to 28 U.S.C. § 1332(a). To this end, it alleges defendants are
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1 “a tribal corporation with its principal place of business in Whatcom County, Washington” and a
2 “federally-recognized Indian tribe located in Whatcom County, Washington.” (Dkt. # 1)

3 The removal statute states at 28 U.S.C. § 1441(b) that a diversity action “shall be
4 removable only if none of the parties in interest properly joined and served as defendants is a
5 citizen of the State in which such action is brought.” Nooksack Business Corporation II is a
6 corporation with its principal place of business in Washington State and therefore a citizen of
7 Washington State for the purposes of determining federal jurisdiction. See Cook v. AVI Casino
8 Enters., Inc., 548 F.3d 718, 724 (9th Cir. 2008). Thus, removal is clearly not permissible under
9 the statute.

10 Further, regardless of the removal statute, any alleged diversity between the parties
11 is destroyed because Nooksack Indian Tribe, as an unincorporated Indian tribe, is not a citizen of
12 any state within the meaning of the federal diversity statute and therefore “cannot sue or be sued
13 in diversity.” Am. Vantage Cos. v. Table Mountain Rancheria, 292 F.3d 1091, 1091 (9th Cir.
14 2002); Cohen’s Handbook of Federal Indian Law § 7.04 (2005). For both of these independent
15 reasons, this Court lacks subject matter jurisdiction and must remand.

16 **Costs and Expenses**

17 Plaintiff seeks an award of just costs and actual expenses incurred, including
18 attorney fees, under 28 U.S.C. § 1447(c). The process of removing a case to federal court and
19 then having it remanded back to state court delays resolution of the case, imposes additional
20 costs on both parties, and wastes judicial resources. Martin v. Franklin Capital Corp., 546 U.S.
21 132, 140 (2005). Therefore, an award of fees is appropriate when the removing party lacks an
22 objectively reasonable basis for seeking removal. Id. Here, defendants lacked any objectively
23 reasonable basis to remove this case.¹ As such, an award of just costs and actual expenses

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25 ¹ Defendants’ Opposition to Motion to Remand (Dkt.#2) characterizes the case for
26 removal as “fairly debatable,” yet inexplicably cites caselaw which supports plaintiff’s rather
than their own position. Further, the fact that a petition for certiorari is pending before the
Supreme Court in Cook v. Avi Casino Enters., Inc., 548 F.3d 718 (9th Cir. 2008), a case which
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1 incurred, including attorney fees, is appropriate.

2 There being no basis for the exercise of federal jurisdiction, this matter will be
3 remanded to Whatcom County Superior Court. Plaintiff shall, within five days from the date of
4 this Order, file a statement of just costs and actual expenses, including attorney fees, incurred as
5 a result of the removal as permitted under 28 U.S.C. § 1447(c). The Clerk of Court is directed to
6 note the request for fees and costs on its calendar for October 20, 2009.

7 Dated this 13th day of October, 2009.

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11 Robert S. Lasnik
12 United States District Judge
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26 does not appear to address the jurisdictional issues now before the Court, does not justify leaving
the case in federal court based on a remote possibility of a change in the law.